(1) **SINGLE BENCH** (3)

C. F. 1201

BEFORE THE HONOURABLE HIGH COURT OF CHHATTISGARH AT BILASPUR C.G.

W.P 2737/2005

PETITIONER:- Moti Lal Verma s/o Late jeevan Lal Verma
Aged 6 0 years r/o MIG 46 Padmnabhpur Durg C.G.

VERSUS

RESPONNDENTS
1.Bank of Baroda Branch at Durg (M.P.) Now C..G.
2.M/S Bhagraj Manufacturing and Trading(Pvt.) Ltd.Regd. Office 192 B Pocket C Siddharth extension New Delhi
3. Govindlal Dhingra s/o Rajaram Dhingra (Now expired)
4. Harbans Lal Dhingaras/o Rajaram Dhingra
5. Ashok Dhingra s/o Govind lal Dhingra
6. M/S Dhingra & company MIG-37-38
7. Smt. Shanti Devi w/o Rajaram Dhingra, Res. No 4,5,6 & 7 all are Resident of - MIG 37-38- Padmnabhpur Durg C.G.
8. Smt. Darshana aneja w/o Omprakash Aneja HIG-1/24 MPHB Coloney Borasi Extension Tah and Distt. Durg
9. Smt. Beena Kumari w/o harbans Lal MIG 37-38 Padmnabhpur Durg C.G.
10.The debt recovery Officer Jabalpur.M.P.
11.The presiding officer Debt recovery Jabalpur M.P.

P.R. No. 2265/05 Presented by Shri D.K. Dubey dated 25/10/05

WRIT PETITION UNDER ARTICLE 226, 227 THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF MANDAMUS, CERITIORARY AND OTHER APPROPRIATE WRIT AND DIRECTIONS.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.2737/ **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	29-6-2005 Mr. Arjun Yadav, counsel for the petitioner. The petitioner, who stood guarantor to respondent No.2 before the Excise Department in respect of a liquor contract awarded to respondent No.2, has preferred this writ petition under Article 226/227 of the Constitution of India, with prayer to quash recovery proceedings started by the Debts Recovery Officer by way of auction of the property of the petitioner and direct to recover the loan amount from respondent No.2 & legal heirs (respondents No.2 to.9), and the proceedings of sale which is still to be continued in future be stayed, till the disposal of the petition. Brief facts leading to filing of this writ petition, as set out in the writ petition are that respondent No.2 is a manufacturing and trading company carrying the business of liquor whose directors are Govind Lal Dhingra (since deceased), Harbans Lal Dhingra and Rajaram Dhinga (since deceased). They passed a resolution in meeting for the purpose of cash credit facility loan, overdraft, letter of credit, guarantee & counter guarantee, and discounting of bill up to the limit of Rs.1 crore. On behalf of respondent No.2 Director R.R. Dhingra and Harbanslal Dhingra were authorized to execute documents before the Bank. On 3-6-1993 respondent No.1 provided facility of bank guarantee of worth Rs.29,16,667/-. The petitioner alongwith R.R. Dhingra, G.L. Dhingra, Rajesh Dhingra, Rajiv Dhingra & Ashok Dhingra stood guarantor. The petitioner executed an equitable mortgage of immovable property towards the outstanding loan and based on that respondent No.2 obtained the contract for liquor after furnishing bank guarantee issued by respondent No.1 in favour of respondent No.2. Respondent No.2 failed to pay the amount. The District Excise Officer requested the Bank to pay the bank guarantee amount and the	

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मामला क्रमांक ..... W.P.2737/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bank requested respondent No.1 and informed to pay the amount, but the amount was not paid by respondent No.2. Therefore, the Bank paid to the Excise Department. Ultimately, the Bank filed a civil suit for recovery of amount of Rs.47,38,411/- before the District Judge, Durg from where the civil suit was transferred to the Debts Recovery Tribunal, Jabalpur, constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Tribunal after issuing notice to the respondents and petitioner passed ex-parte order after publishing in the newspaper.

Further case of the petitioner is that the Tribunal passed order without giving proper notice, which is liable set aside. The Tribunal issued recovery certificate to the recovery officer from the property of the petitioner.

I have heard learned counsel for the petitioner.

The main argument of learned counsel for the petitioner is that the Tribunal is not recovering the amount from respondents No.2 to 10 and instead of that the D.R.T. is recovering the amount from the petitioner. Now, the recovery officer has started auction proceedings regarding the amount of mortgage property of the petitioner. Therefore, the execution proceedings and the auction proceedings be stayed.

Having heard learned counsel for the petitioner and having perused the petition, I am of the opinion that the instant writ petition is wholly misconceived. Proper course for the petitioner was to approach the Tribunal for seeking remedy under the law. If any ex-parte order was passed against the petitioner without giving proper notice, in that case the petitioner is at liberty to raise this point before the Tribunal, and other points raised by the petitioner can also be raised before the Tribunal. In the first instance, the Tribunal is the judicial authority constituted under the Recovery of Debts Due to Banks and Financial

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मामला क्रमांक W.P.2737/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

institutions Act, 1993, and the Tribunal has been constituted under the special legislation in order to curtail the delay in recovery of bank loans and other financial institutions. Therefore, the petitioner should approach the Tribunal for appropriate remedy.

In the circumstances, I am of the opinion that it is not a fit case in which the extra ordinary jurisdiction under Article 226 of the Constitution of India, should be invoked. The writ petition is accordingly, dismissed. There will be no order as to costs.

Consequently, M.(W.)P.Nos.2261/2005, 2262/2005 and I.A. No.5434/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

GR.PRJ—FS/350—12/2000—50,000.